

APPEAL NO. 020759  
FILED MAY 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 4, 2002. The hearing officer resolved the disputed issues before her by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter from August 17, 2001, through November 15, 2001, because the appellant (self-insured) waived its right to contest entitlement to SIBs for the fifth quarter by failing to timely request a benefit review conference (BRC). The self-insured appealed, asserting evidentiary and legal error on the part of the hearing officer. The file contains no response from the claimant.

DECISION

Affirmed.

The sole issue on appeal is whether the self-insured waived its right to contest the claimant's entitlement to SIBs for the fifth quarter because of its failure to timely request a BRC. The hearing officer determined that the self-insured's third party administrator (TPA) received the claimant's Application for [SIBs] (TWCC-52) for the fifth quarter on August 8, 2001. She further determined that the self-insured filed a Request for a [BRC] (TWCC-45) with the Texas Workers' Compensation Commission on August 22, 2001, which was not within 10 days of receipt of the claimant's TWCC-52. The hearing officer concluded that the self-insured had waived its right to contest the claimant's entitlement to SIBs for the fifth quarter.

Section 408.147(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(d) (Rule 130.108(d)) provide, in relevant part, that if an insurance carrier fails to make a request for a BRC within 10 days after receipt of the employee's statement, the insurance carrier waives the right to contest entitlement to SIBs.

The self-insured asserts that the hearing officer erred in admitting into evidence a green card which the claimant offered to show that the self-insured's TPA received his TWCC-52 on August 8, 2001. At the hearing, and again on appeal, the self-insured argued that the document had not been timely exchanged. The hearing officer asked the claimant if the document had been exchanged at the BRC and he responded that it had. Additionally, the claimant testified as to when and how he mailed his TWCC-52 to the self-insured's TPA. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in admitting evidence, an appellant must first show that the admission was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Whether or not the disputed evidence was exchanged was a factual determination for the

hearing officer to make. The hearing officer's decision to admit the evidence is supported by sufficient evidence. Even if we were to determine that the evidence was improperly admitted, it would not arise to the level of reversible error as it was cumulative of the claimant's testimony.

The self-insured next asserts that the 10-day time period to request a BRC should have been tolled because the claimant's TWCC-52 was incomplete when received by the TPA. The issue of whether the self-insured is relieved of liability under Section 408.143(c) is a separate issue from the issue of the claimant's entitlement to SIBs. No such issue was before the hearing officer and it is likewise not before us on appeal. Aside from noting that the claimant's TWCC-52 clearly puts the self-insured on notice that he was alleging a total inability to work for the qualifying period in question, the issue will not be discussed further in this decision.

Finally, the self-insured asserts that the 10-days to request a BRC should have commenced when it, not its TPA, received the claimant's TWCC-52. Not only was this not an issue at the hearing, documentation in the file clearly shows that the TPA was receiving correspondence and other communications for this claim on behalf of the self-insured.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Robert W. Potts  
Appeals Judge